Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Promoting Expanded Opportunities for Radio Experimentation and Market Trials under Part 5 of the Commission's Rules and Streamlining Other Related Rules	)	ET Docket No. 10-236
	)	
2006 Biennial Review of Telecommunications Regulations – Part 2 Administered by the Office of Engineering and Technology (OET)	)	ET Docket No. 06-105

PETITION FOR CLARIFICATION OR RECONSIDERATION

Sirius XM Radio Inc. ("Sirius XM") and EchoStar Technologies Inc. and EchoStar Satellite Operating Corporation (together, "EchoStar," and with Sirius XM, the "Satellite Parties") hereby seek clarification, or if necessary, reconsideration of the Report and Order in the above-captioned proceeding.[1] Specifically, for purposes of the new rules relating to program experimental licenses, the Satellite Parties ask the Commission to add a new definition of "emergency notifications" to make clear that it intended to include all participants in the Emergency Alert System ("EAS") in that category. The requested clarification corrects an apparent oversight in the Commission's decision, ensures the protection of critical EAS operations, and will facilitate compliance with the new regulatory framework set forth in the Order.

[1] *Promoting Expanded Opportunities for Radio Experimentation and Market Trials Under Part 6 of the Commission's Rules and Streamlining Other Related Rules and 2006 Biennial Review of Telecommunications Regulations – Part 2 Administered by the Office of Engineering and Technology*, Report and Order, ET Docket Nos. 10-236 & 06-155, 28 FCC Rcd 758 (2013) (the "Order").

I. BACKGROUND

Sirius XM is the licensee of Satellite Digital Audio Radio System ("SDARS") systems in the 2320-2332.5 MHz and 2332.5-2345 MHz bands that provide a high-quality, continuous, multi-channel audio service to over twenty-four million customers in the United States. In addition to carrying music, sports, talk, and other entertainment programming, Sirius XM delivers timely news and weather information and participates fully in the EAS.[2] Sirius XM has significant EAS responsibilities beyond transmitting national alerts directly to satellite radio subscribers. Specifically, Sirius XM operates as one of only three non-broadcast entities designated as Primary Entry Point ("PEP") stations[3] and partners with the Federal Emergency Management Agency to provide a backup mechanism for distributing those alerts to other PEP stations, a function that would be especially critical in the event the terrestrial distribution system is disrupted in an emergency. Thus, Sirius XM serves as a key source of information that can be critical to listeners in the event of a natural disaster or public safety emergency.

EchoStar is a diverse and dynamic U.S. company. Founded by Charlie Ergen in 1980, EchoStar is a home-grown U.S. satellite operator, services provider, and technology company. Today EchoStar owns, leases, or operates a fleet of 22 satellites in the Broadcasting-Satellite Service, Fixed-Satellite Service, and Mobile-Satellite Service bands providing various innovative and competitive services, including multi-channel video programming distribution and state-of-the-art broadband services. EchoStar is the fourth largest satellite operator in the world. EchoStar is also a leading satellite technology and services company and employs more

[2] *See* 47 C.F.R. § 11.51(i).

[3] *See Strengthening the Emergency Alert System (EAS): Lessons Learned from the Nationwide EAS Test*, EB Docket No. 04-296 (PSHSB rel. Apr. 14, 2013) ("Strengthening the EAS System") at 10 n.21.

than 2,000 engineers focused on creating hardware and service solutions (*e.g.*, digital set-top boxes and related products and technology, including Slingbox "placeshifting" technology) for cable, telecommunications, IPTV, and satellite companies worldwide.

II. THE NOTICE RECOGNIZED THE NEED TO PROTECT CRITICAL SERVICE PROVIDERS, INCLUDING EAS PARTICIPANTS

The Commission's stated intention in this proceeding was to consider ways to streamline and modernize the Experimental Radio Service ("ERS") licensing process to facilitate innovation.[4] However, the Commission also recognized the need to protect incumbent licensed operations from harmful interference resulting from ERS operations.[5] In particular, the Commission stressed that spectrum used to provide emergency notifications or other public safety communications should not be subjected to disruptive interference, and it proposed special measures to protect such services.[6]

Specifically, paragraph 31 of the Notice identified several types of existing services meriting special protections because their frequency bands are "vital for public safety purposes or are used for campus security operations."[7] These services include "[t]elevision and

[4] *See Promoting Expanded Opportunities for Radio Experimentation and Market Trials under Part 5 of the Commission's Rules and Streamlining Other Related Rules; 2006 Biennial Review of Telecommunications Regulations – Part 2 Administered by the Office of Engineering and Technology (OET)*, Notice of Proposed Rulemaking, ET Docket Nos. 10-236 and 06-105, 25 FCC Rcd 16544 (2010) ("Notice"); *Erratum*, 26 FCC Rcd 3828 (2011).

[5] *See* Notice at ¶ 25 ("we emphasize that all experiments must be conducted on a non-interference basis to primary and secondary licensees, and that the licensee must take all necessary technical and operational steps to avoid harmful interference to authorized services") (footnote omitted).

[6] *See id.* at ¶ 31.

[7] *Id.*

radio broadcast bands [that] are used in support of the Emergency Alert System (EAS)," as well as other bands serving similarly crucial functions.[8]

The Notice's recognition of the importance of EAS reflects the Commission's long-standing commitment to ensuring that the system, which is "critical to public safety," is effective, reliable, and robust.[9] For decades, the FCC has relied on the EAS as a primary means of providing emergency alerts and related vital communications during times of national, state, regional, and local emergencies. In conjunction with the Federal Emergency Management Agency ("FEMA"), the Commission has designed the EAS system to be available under all conditions for the President of the United States to address the American public during a national emergency, for state and local authorities to deliver important emergency information, and for the National Weather to disseminate emergency weather alerts and advisories.[10] Further demonstrating the critical nature of the EAS, following two years of planning and preparation the FCC and FEMA recently conducted a nationwide test to assess how the EAS architecture would perform in practice and to develop and implement any necessary improvements to ensure that the EAS, if activated in a real emergency, would perform as designed.[11] Sirius XM filed an *ex parte*

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[8] *Id.* (footnote omitted).

[9] *See Review of the Emergency Alert System,* First Report and Order and Further Notice of Proposed Rulemaking, EB Docket No. 04-296, 20 FCC Rcd 18625 (2005) at ¶ 62.

[10] *See Review of the Emergency Alert System,* Second Report and Order and Further Notice of Proposed Rulemaking, EB Docket No. 04-296, 22 FCC Rcd 13275 (2007) at ¶ 5, *citing* Public Alert and Warning System, Exec. Order No. 13407, 71 Fed. Reg. 36975 (June 26, 2006) at Section 1.

[11] Strengthening the EAS System at 3. The Government Accountability Office has also taken an active role in ensuring that the EAS system provides the reliability needed to carry out its critical functions, stating in a report to Congressional requestors that absent regular testing and further structural changes, "there is no assurance the EAS would work should the President need to activate it to communicate with the American people." *See* U.S. Government Accountability Office, *Emergency Alerting: Capabilities Have Improved, but Additional Guidance and Testing Are Needed,* GAO-1-375 (April 2013) at 28.

letter in this proceeding agreeing that the EAS network requires protection and urging the Commission to make clear that EAS participants should be deemed providers of emergency notification for purposes of the special protections proposed in the experimental program rules.[12]

III. THE ORDER CONFIRMED THAT SPECIAL PROTECTIONS ARE NEEDED FOR INCUMBENTS PROVIDING CRITICAL SERVICES

The Order adopted the Notice's proposal to establish program licenses as a new category of ERS licenses while acknowledging that certain incumbents require heightened interference protection. The Commission determined that a program experimental license would enhance flexibility for qualified parties by authorizing licenses with a longer term, permitting licensees to conduct multiple unrelated experiments at defined geographic locations under the licensee's control, and allowing operations within a range of frequencies, emissions and power levels.[13] The Order also specified that the Commission would authorize program license applications using a streamlined process that relies on a web-based notification procedure to make interested parties aware of the planned experiments.[14]

Recognizing that this added flexibility for experimental program licensees must not create undue risks to services offered by incumbents,[15] the Commission reiterated its concern that experimental licensees may not disrupt services that provide critical communications in the event of an emergency. The Order therefore "adopt[ed] the Commission's proposal" to implement specific measures to avoid harmful interference "[f]or program license experiments

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[12] *See* Letter of Karis A. Hastings, Counsel for Sirius XM Radio Inc., to Ms. Marlene H. Dortch, Secretary, FCC, ET Docket Nos. 10-236 and 06-155 (filed Aug. 23, 2012) at 5-6.

[13] *See* Order at ¶ 34.

[14] *See id.* at ¶ 71.

[15] *See id.* ("Our overriding goal is to ensure that program experiments can proceed in an efficient and expeditious manner, without impairing or causing harmful interference to . . . incumbent operations.").

that may affect critical service bands (*i.e.* bands used for the provision of commercial mobile services, emergency notifications, or public safety purposes)."[16]

The Order required that any program licensee seeking to use such bands must develop a specific, tailored plan to avoid interference with these services and notify the critical service licensees whose operations may be affected.[17] The Order specified that this plan:

> must be developed by the program licensee prior to commencing an experiment, and provide notice to licensees and, as appropriate, to end users of the critical service bands who could potentially be affected by the experiment describing how the program licensee intends to quickly identify and eliminate any harm that the experiment may cause.[18]

The web-based notification for the experiment must expressly identify frequencies proposed for experimental operations that are used for CMRS, public safety, or emergency notification services, along with a list of the affected critical service licensees. The Commission observed that this requirement:

> will serve as an effective check that the program experimental licensee has conducted sufficient research to meet the requirement that it has contacted all critical service licensees who might be affected by the experiment, and will aid us in evaluating whether the licensee is conducting its activities with the high level of rigor and diligence that we will demand under the program experimental license program.[19]

[16] *See id.* at ¶ 59.

[17] *See id.*

[18] *Id.* (footnote omitted).

[19] *Id*.

These extra protections, codified in new Sections 5.309(a)(5) and 5.311 of the Commission's rules,[20] are essential to ensuring that the broad operational flexibility afforded to a program experimental licensee does not adversely affect public safety by disrupting critical services.

IV. THE COMMISSION SHOULD DEFINE EMERGENCY NOTIFICATION PROVIDERS, WITH THE DEFINITION INCLUDING ALL EAS PARTICIPANTS

Given the Commission's recognition of the need to protect critical service providers and its expectation that program licensees will themselves identify those providers, the Commission must clearly define the critical services to which this requirement applies. In what appears to be an oversight, the Order fails to identify which entities are included in the protected "emergency notification" bands. The Order cites the list of CMRS frequencies provided in paragraph 31 of the Notice,[21] but does not discuss what it means by "emergency notification" bands or even repeat the Notice's discussion of EAS participants' central role in providing such notifications. Instead, the Order is silent on the matter of what service providers come within the emergency notification category.

The Order's failure to clearly explain which entities are included in the emergency notification category of critical services will create confusion on the part of experimental program license applicants and undermine compliance with the Commission's goal of avoiding interference threats to the EAS network. In the case of potential interference to the Sirius XM signal, the effect could extend well beyond the millions of subscribers to its services because of Sirius XM's role in ensuring reliable distribution of EAS messages to other PEP stations and ultimately those who rely on the EAS network for emergency information.

[20] *See* Order at Appendix B, new rule sections 5.309 and 5.311.

[21] *See* Order at ¶ 50 & n.90.

The practical consequence of this silence is that a program license applicant seeking to comply with the requirement that it identify and notify critical services licensees has no clear indication of the intended scope of its obligations. Any such applicant may well fail to identify bands used by EAS providers as critical service bands that trigger the additional interference protections set forth in the rules, creating the risk that the EAS network's ability to reliably deliver public safety warnings would be compromised.

To ensure that the scope of this category of critical services is clearly understood and avoid a potential threat to the EAS system's integrity, the Commission should provide a definition of emergency notification providers. Consistent with the discussion in the Notice, that definition should make clear that all EAS participants are entitled to the special protections for critical services set forth in new Sections 5.309(a)(5) and 5.311 of the Commission's rules. Accordingly, the Satellite Parties request that the Commission add the following definition to Section 5.5 of the Rules:

> *Emergency notifications.* Providers of emergency notifications include all participants in the Emergency Alert System as identified in Section 11.1 of this chapter.

This clarification will protect the EAS network and facilitate program license applicants' compliance with the additional requirements applicable when proposing operations in frequencies used for emergency notification services.

V. CONCLUSION

For the foregoing reasons, the Satellite Parties request that the Commission clarify or reconsider the rules for experimental program licenses by adopting a definition of emergency notification providers that includes all EAS participants. This action will contribute to the strengthening of EAS in the United States.

Respectfully submitted,

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